

Department. As per said order, the Government of Punjab has decided to conduct fresh inquiry and for the said purpose, Mr. Kahan Singh Pannu, I.A.S. has been nominated as an Inquiry Officer and Mr. Gurtej Singh, DSP has been deputed as Presenting Officer.

3. The petitioner during 2011 was posted as DSP at Jalandhar. An FIR No. 53 dated 21.04.2011 under Sections 302, 34 IPC and 25, 27, 54, 59 of Arms Act, at Police station Division No.6, Jalandhar came to be registered. The police after completing investigation filed its report and Trial Court concluded the trial. Learned Sessions Judge while passing judgment dated 03.08.2015 (Annexure P-1) deprecated role and conduct of present petitioner. The relevant extracts of the judgment dated 03.08.2015 read as:

"Furthermore, this witness (Harpreet Singh PPS) remained connected with the investigation of this case from 21.4.2015 to 25.4.2015, as supervisory officer, so his appearing as defence witness and deposing in favour of the accused against proved facts, is not appreciable."

4. In the wake of observations of District and Sessions Judge, Gurdaspur, the respondent decided to initiate departmental proceedings against the petitioner. A retired District and Sessions Judge was appointed as Inquiry Officer who after concluding inquiry submitted his report dated 08.07.2016 wherein he exonerated the petitioner. The Disciplinary Authority i.e. Additional Chief Secretary vide order dated 26.07.2016 (Annexure P-6) accepted findings of Inquiry Officer.

5. The complainant of the aforesaid FIR filed multiple representations before Chief Minister requesting him to re-examine findings of Inquiry Officer.

The Chief Minister formed an opinion that matter should be re-inquired and

accordingly Additional Chief Secretary passed order dated 03.08.2017 whereby Kahan Singh Pannu, I.A.S. was appointed Inquiry Officer to conduct fresh inquiry. This led to filing of present writ petition.

6. Mr. D.S. Patwalia, Senior Advocate submits that fresh inquiry can be conducted in terms of Rule 21 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970 (for short '**1970 Rules**'). An authority can review an order passed under 1970 Rules, whereas, in the case in hand, there was no order, thus, impugned order was beyond the scope of Rule 21 of 1970 Rules. The order of review can be passed within 6 months by an appellate authority and by any other authority duly notified by the Governor within time specified by Governor though he himself can review order without limitation period. The order dropping the proceedings was passed by Additional Chief Secretary and impugned order has also been passed by Additional Chief Secretary. The successor-in-office could not review order of his predecessor.

7. *Per contra*, Mr. Pawan Kumar, DAG, Punjab submits though order dated 03.08.2017 was passed by Additional Chief Secretary, yet, it was passed on the direction of Chief Minister who is an appellate authority against the order passed by Additional Chief Secretary. The order dropping charges was passed by Additional Chief Secretary, thus, Chief Minister was competent to review order passed by Disciplinary Authority and direct re-inquiry. He further submits that Government has placed the matter before Governor and sought *post-facto* approval, thus, defect, if any, stands rectified. The proceedings against the petitioner cannot be dropped on technical or procedural infirmities.

8. During the course of hearing, learned State counsel produced internal noting dated 22.09.2021. It discloses that matter was put up before the

Governor seeking post-facto approval of order passed by Chief Minister. Copy of the noting is taken on record as 'Annexure 'A'.

9. I have heard the arguments of both sides and perused the record with their able assistance.

10. The conceded position emerging from record is that the petitioner at the time of registration of FIR No. 53 dated 21.04.2011 was posted as DSP at Jalandhar. The police investigated the matter and filed its report. Learned Sessions Judge, Gurdaspur adjudicated the matter. While passing the judgment dated 03.08.2015, he observed about the act and conduct of the petitioner. A retired District and Sessions Judge, in terms of 1970 Rules, was appointed as Inquiry Officer who exonerated him from all the charges and disciplinary authority i.e. Additional Chief Secretary accepted report of Inquiry Officer and vide order dated 26.07.2016 withdrew departmental proceedings. The complainant of FIR filed representations before the Chief Minister. Being an appellate authority, Chief Minister reviewed the order of Disciplinary Authority and ordered to re-inquire the matter. No formal review order was passed by Chief Minister and it came to be passed by Additional Chief Secretary. The petitioner is assailing institution of fresh inquiry against him.

11. The procedure for imposing major penalty has been prescribed by Rule 8 of 1970 Rules. As per said Rule, the Inquiry Officer has to conduct inquiry in the manner prescribed therein and has to submit his report to Disciplinary Authority. The Disciplinary Authority may himself be an Inquiry Officer. The Inquiry Officer after conclusion of inquiry has to prepare a report which contains the articles of charge, statement of imputation of misconduct or misbehavior; defence of the Government employee in respect of each article of

charge; an assessment of evidence in respect of each article of charge; the findings on each article of charge and reasons therefore, written brief, if any, filed by the Presenting Officer and the orders, if any, made by punishing authority. Sub-Rule (23) of Rule 8 is reproduced as below:-

“Rule 8. Procedure for imposing major penalties

Xxx

xxx

xxx

(23)(i) *After the conclusion of the inquiry, a report shall be prepared and it shall contain-*

(a) the articles of charge and the statement of the imputations of misconduct or misbehavior;

(b) the defence of the Government employee in respect of each article of charge;

(c) an assessment of the evidence in respect of each article of charge;

(d) the findings on each article of charge and the reasons therefore.

Explanation. - *If in the opinion of the inquiring authority the proceedings of the inquiry establish any article of charge different from the original articles of the charge, it may record its findings on such article of charge:*

Provided that the findings on such article of charge shall not be recorded unless the Government employee has either admitted the facts on which such article of charge is based or has had a reasonable opportunity of defending himself against such article of charge.

(ii) The inquiring authority where it is not itself the punishing authority shall forward to the punishing authority the records of inquiry which shall include -

(a) the report prepared by it under clause (i);

(b) the written statement of defence, if any, Submitted by the Government employee;

(c) the oral and documentary evidence produced in the course of the inquiry;

(d) written briefs, if any filed by the presenting officer or the Government employee or both during the course of the inquiry; and

(e) the orders, if any, made by the punishing authority and the inquiring authority in regard to the inquiry.”

12. In the case in hand, the Inquiry Officer was different from Disciplinary Authority, thus, the Inquiry Officer after concluding inquiry placed his report before the Disciplinary Authority. The Disciplinary Authority has to take action on the Inquiry Report. The procedure for taking action on Inquiry Report is prescribed by Rule 9 of 1970 Rules. The Disciplinary Authority may or may not accept report of Inquiry Officer. Rule 9 is reproduced as below:-

Rule 9. Action on the inquiring report.

(1) The punishing authority, if it is not itself the inquiring authority may, for reasons to be recorded by it in writing, remit the case to the inquiring authority for further inquiry and report and the inquiring authority shall thereupon proceed to hold the further inquiry according to the provisions of Rule 8 as far as may be.

(2) The punishing authority shall, if it disagrees with the findings of the inquiring authority on any article of charge, record its reasons for each disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose.

(3) If the punishing authority having regard to its findings on all or any of the articles of charge is of the opinion that any of the penalties specified in Clauses (i) to (iv) of Rule 5 should be imposed on the Government employee, it shall, notwithstanding anything contained in Rule 10, make an order imposing such penalty:

Provided that in every case where it is necessary to consult the commission, the record of the inquiry shall be forwarded by the punishing authority to the commission for its advice and such advice shall be taken into consideration before making any order imposing any penalty on the Government employee.

(4) If the punishing authority having regard to its findings on all or any of the articles of charge and on the basis of the evidence adduced during the inquiry, is of opinion that any of the penalties specified in Clauses (v) to (ix) of Rule 5 should be imposed on the Government employee, it shall make an order imposing such penalty and it shall not be necessary to

give the Government employee any opportunity of making representation on the penalty proposed to be imposed:

Provided that in every case where it is necessary to consult the Commission, the record of the inquiry shall be forwarded by the punishing authority to the Commission for its advice and such advice shall be taken into consideration before making an order imposing any such penalty on the Government employee.”

13. In the case in hand, the Disciplinary Authority agreed with the findings of Inquiry Officer and dropped proceedings against the petitioner. Rule 21 of 1970 Rules provides that Governor or appellate authority or other authority specified by Governor by general or special order, may review orders passed under 1970 Rules. The Reviewing Authority may confirm, modify or set-aside the order or it may remit the case to authority which made the order or to any other authority directing such authority to make further inquiry as it may consider proper in the circumstances of the case. Rule 21 of 1970 Rules is reproduced as below:-

Rule 21- Review.

(1) Notwithstanding anything contained in these Rules, -

(i) the Governor; or

(ii) the appellate authority, within six months of the date of the order proposed to be reviewed; or

(iii) any other authority, specified in this behalf by the Governor by a general or special order, and within such time as may be prescribed in such general or special order;

may at any time, either on his or its own motion or otherwise call for the records of any inquiry and review any order made under these Rules or under the Rules repealed by Rule 25 from which an appeal is allowed, but from which no appeal has been preferred or from which no appeal is allowed, after consultation with the Commission where such consultation is necessary, and may -

(a) confirm, modify or set aside the order, or

(b) confirm, reduce, enhance or set aside the penalty imposed by the order; or impose any penalty where no penalty has been imposed; or

(c) remit the case to the authority which made the order or to any other authority directing such authority to make such further inquiry as it may consider proper in the circumstances of the case; or

(d) pass such other orders as it may deem fit:

Provided that no order imposing or enhancing any penalty shall be made by any reviewing authority unless the Government employee concerned has been given a reasonable opportunity of making a representation against the penalty proposed and where it is proposed to impose any of the specified in clauses (v) to (ix) or Rule 5 or to enhance the penalty imposed by the order sought to be reviewed to any of the penalties specified in those clauses, no such penalty shall be imposed except after an inquiry in the manner laid down in Rule and except after consultation with the Commission, where such consultation is necessary.”

14. From the perusal of above-quoted Rule, it is evident that Governor, without limitation period, can review any order passed under 1970 Rules. The Appellate Authority may review within 6 months from the date of order proposed to be reviewed and any other notified authority may review within such time as may be prescribed in general or special order.

15. The petitioner is claiming that only an order passed under 1970 Rules may be reviewed under Rule 21. In the case in hand, there was no order under 1970 Rules, thus, there was no question of review. This Court, finds itself unable to countenance his argument because the Disciplinary Authority may or may not report of the Inquiry Officer. The Inquiry Officer may, in his report, exonerate the delinquent or may propose for punishment. In case, there is proposal for exoneration, the Disciplinary Authority may agree to exonerate or may order to punish. If the contention of the petitioner is accepted, in case of

disagreement of disciplinary authority with the proposal of exoneration, there would be an order whereas in case disciplinary authority agrees with the inquiry officer's proposal of exoneration, there would be no order. The disciplinary authority has right to agree or disagree with the inquiry officer. Action of disciplinary authority accepting report of inquiry officer where he has proposed to exonerate the delinquent, cannot be treated as 'no order' in terms of 1970 Rules. If rejection of report of Inquiry officer is an order, it would be travesty of justice, if it is held that acceptance of report of inquiry officer whereby he has proposed to exonerate the delinquent, is not an order.

16. In the case in hand, the inquiry officer proposed to exonerate the delinquent and disciplinary authority by way of order dated 26.07.2016 accepted his report and dropped the departmental proceedings, thus, it cannot be held that said order is not an order in terms of Rule 9 of 1970 Rules.

17. The respondent has pleaded that impugned order was passed by the Chief Minister acting as an appellate authority. The State has further pleaded that impugned order was passed in terms of Rule 21 of 1970 Rules. The appellate authority may pass order within 6 months from the date of order proposed to be reviewed. The order by disciplinary authority was passed on 26.07.2016 and it was reviewed by appellate authority on 04.08.2017 i.e. after more than one year from the date of order reviewed. The impugned order was passed beyond the period prescribed by Rule 21, thus, it deserves to be set aside on the sole ground of limitation.

18. The respondent has further pleaded that Governor has granted post-facto approval. The respondent on one hand has pleaded that order-in-review was passed by the appellate authority i.e. Chief Minister and on the other hand

has pleaded that post-facto approval has been sought from the Governor. As soon as power of review is exercised by Appellate Authority under Clause (ii), there is no question of approval by Governor either under Clause (ii) or (iii) of Rule 21(1) of 1970 Rules. Clause (i) of Rule 21(1) of 1970 Rules empowers Governor to review an order. The Governor is further empowered to authorize any authority by general or special order to review an order within such time as may be prescribed in such special or general order. From the noting produced by respondent, it does not come out that Governor, by general or special order, has appointed any authority to review an order. There is further nothing on record disclosing that the Governor has prescribed time within which an authority could review an order.

19. The matter needs to be examined from another angle. The appellate authority as per the said rule is an independent authority. The respondent has pleaded that order in review was passed by Chief Minister as an appellate authority. The Governor is empowered to appoint any other authority but it would not be just and fair to conclude that any other authority includes appellate authority which has already exercised its power.

20. In the case in hand, the appellate authority, as pleaded by respondent, exercised its power on 04.08.2017. The order was passed beyond limitation period. The Governor has neither appointed any authority in exercise of power conferred by clause (iii) of Rule 21(1) nor has prescribed any period. The respondent is claiming that they have sought post-facto approval of order passed by the Chief Minister. The Chief Minister had passed order as an appellate authority as per clause (ii) of aforesaid Rule. There was no question or occasion to grant post-facto approval to order passed by an appellate authority.

The appellate authority was bound to pass order within six months from the date

of order under review. Concededly, order-in-review was passed beyond six months. Thus, it is bad in the eye of law.

21. In the wake of above discussion and findings, this Court is of the considered opinion that present petition deserves to be allowed and accordingly allowed. The impugned notice and consequent proceedings are hereby quashed.

06.05.2024
manoj

[JAGMOHAN BANSAL]
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No